



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISC. APPL. NO. 94 OF 2014**

**IN THE MATTER OF AN APPLICATION BY APPLICANT FOR TRANSFER**

**OF CASE FROM NAIROBI TO MOMBASA AND DISPOSAL**

**AND**

**IN THE MATTER OF CHILDREN’S CASE NO. 52 OF 2012 AT NAIROBI T Z S –V- A B P AND K S**

**AND**

**IN THE MATTER OF A Q A P, A A P AND M A P (MINORS)**

**BETWEEN**

**T Z S.....APPLICANT**

**VERSUS**

**A B P.....1<sup>ST</sup> RESPONDENT**

**K S.....2<sup>ND</sup> RESPONDENT**

**RULING**

The application is dated 20<sup>th</sup> May 2014. The applicant seeks that the **Children’s Case No. 52 of 2012 (Nairobi) T Z S va A B P and K S** be transferred from Nairobi Children’s Court to Mombasa Children’s Court.

The reasons for the application are;

Applicant and Respondent reside in Mombasa; and

Mombasa is the proper forum. The filing of the case in Nairobi was an oversight.

The respondent filed grounds of opposition on 4<sup>th</sup> September 2014. The grounds are;

The plaintiff/applicant filed the suit in Nairobi and was living in Mombasa at the time.

No valid reasons have been given for the transfer of the file at this late stage. I have considered the application;

Under the CPA Section 12 and 15, the subject matter is the children who reside in Mombasa and the place of suing should be in Mombasa.

However, the court is persuaded by the fact that to serve the best interests of the children of the marriage is paramount based on the Act 53 of the Constitution and section 4(3) of the Children Act, 2001. The matter was filed in Nairobi by the applicant. The hearing has been conducted by three (3) magistrates who have gone on transfer. The case is part heard and the applicant testified. It is for the respondent to testify. Since 2012, the matter has taken too long. To restart the case in Mombasa would be prejudicial to the children; they will wait longer for the court to resolve the matter.

Secondly; no evidence was adduced of any prejudice to the parties if the hearing is in Nairobi Children Court except inconvenience of the children and their school term being interfered with.

The Court finds at this stage of the proceedings the court file does not indicate the children will be required to testify. If they will testify, the trial Court will take into consideration the children school calendar, attendance and convenience and allocate appropriate time and date so as not to interfere with the children school going.

The Court finds that the in the absence of cogent reasons for removal of the case in the Children Court Nairobi to restart it again in Mombasa Court the application at this stage is unwarranted in the circumstances, litigation must be brought to conclusion. It is not just to restart the case again after three (3) years.

For these reasons the application to transfer the case is dismissed with costs to the respondent.

Read and signed in open Court in the presence of counsel for the Respondent and absence of the Applicant.

**DATED and DELIVERED at NAIROBI this 26<sup>th</sup> day of September 2014.**

**M. MUIGAI**

**JUDGE**